

259333

4910-15-U

DS(M) 118

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR 165

4566-03-16436-137

[COTP Mobile-03-018]

RIN 1625 - AA00

Safety Zone; 300 Yards East and West of Mile Marker 8, Back Bay Biloxi Industrial Seaway/Big Lake, Biloxi, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

---

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters 300 yards East and West of the Popp's Ferry Bridge in Back Bay Biloxi. This safety zone is needed to protect persons and vessels from potential safety hazards and hazards to navigation associated with the damage sustained to the fender system of the Popp's Ferry Bridge following an allision. Vessels shall not enter into, depart from, or move within this safety zone without permission from the Captain of the Port Mobile or a designated representative.

DATES: This rule is effective from 7 p.m. CST on September 3, 2003 until 7 p.m. CST on October 1, 2003.

~~001~~ #2536 I, 7.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Mobile-03-018] and are available for inspection or copying at Marine Safety Office Mobile, Brookley Complex, Bldg 102, South Broad Street, Mobile, AL 36615-1390 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Carolyn Beatty, Operations Department, Marine Safety Office Mobile, AL, at (251) 441-5771.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b) (B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553 (d) (3), good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect persons and vessels from potential safety hazards and hazards to navigation associated with the damage to the fender system of the Popps Ferry Bridge following an allision.

Background and Purpose

The temporary safety zone is being established because of potential safety hazards and hazards to navigation in the waterway due to damage sustained to the fender system of the Popp's Ferry Bridge following an allision. The known damage includes structural members of the fender system protruding into the waterway. The extent of damage to the underwater structure is unknown. This damage creates a lateral hazard to navigation for all vessels.

As a result, the Captain of the Port Mobile is establishing a safety zone for all waters 300 yards East and West of the Popp's Ferry Bridge in Back Bay Biloxi. Vessels shall not enter into, depart from, or move within this safety zone without permission from the Captain of the Port Mobile or designated representative. This rule is effective beginning at 7 p.m. on September 3, 2003 and will end at 7 p.m. on October 1, 2003. The Captain of the Port Mobile may be contacted at (251) 441-5976 or (251) 441-5121.

#### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not

reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This rule will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal. Vessels desiring to transit through this safety zone may request permission from the Captain of the Port Mobile or designated representative.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 - 612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: recreational vessels, fishing vessels and towing

vessels or barges intending to navigate the waters of Back Bay Biloxi Industrial Seaway/Big Lake, 300 yards east and west of Mile Marker 8. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will allow vessel traffic to pass safely through the zone 24 hours a day upon authorization from the Captain of the Port Mobile or a designated representative.

If you are a small business entity and are significantly affected by this regulation please contact LT Carolyn Beatty, Operations Department, Marine Safety Office Mobile, AL, at (251) 441-5771.

#### Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so they may better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 - 3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that order and have determined that this rule does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$ 100,000,000 or more in any one year. Though this rule will not result in

such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on

the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the



Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). Paragraph (34)(g) is applicable because this rule is establishing a regulated navigation area that will be effective for a period greater than one week. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

Part 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08-118 is added to read as follows:

§ 165.T08-118 Safety Zone; 300 Yards East and West of Mile Marker 8, Back Bay Biloxi Industrial Seaway/Big Lake, Biloxi, MS

(a) Location. The following area is a safety zone: all waters 300 yards East and West of Mile Marker 8 at the Popps Ferry Bridge, Back Bay Biloxi Industrial Seaway/Big Lake, Biloxi, MS.

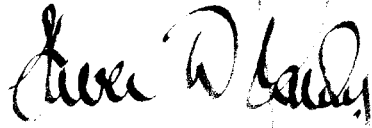
(b) Effective date. This rule is effective from 7 p.m. CST on September 3, 2003 until 7 p.m. CST on October 1, 2003.

(c) Regulations: (1) In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

(2) Persons or vessels requiring entry into or passage through the safety zone must request permission from the Captain of the Port Mobile, or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at (251) 441-5121.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Mobile and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

SEP 3 2003  
DATED: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Steven D. Hardy", written over a horizontal line.

STEVEN D. HARDY  
CAPTAIN, U.S. COAST GUARD  
CAPTAIN OF THE PORT